

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROSS SHADE,
v.
RICHARD E. ANDERSON, et al.,
Defendants.

No. C 13-2303 MMC

**ORDER CERTIFYING APPEAL NOT
TAKEN IN GOOD FAITH; DENYING
PLAINTIFF'S MOTION TO PROCEED IN
FORMA PAUPERIS ON APPEAL;
DIRECTIONS TO CLERK**

On June 17, 2013, the Court issued an order dismissing plaintiff's complaint, and on July 8, 2013, denied plaintiff's motion for reconsideration. On August 12, 2013, plaintiff filed a notice of appeal, along with a motion to proceed in forma pauperis on appeal. Thereafter, on August 23, 2013, the Ninth Circuit Court of Appeals issued a "Referral Notice," referring the matter to this Court "for the limited purpose of determining whether in forma pauperis status should continue for th[e] appeal."

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "Good faith," for purposes of § 1915(a)(3), exists where the appellant seeks "review of any issue not frivolous." See Coppedge v. United States, 369 U.S. 438, 445 (1962). "A claim is frivolous if the factual contentions supporting the claim are clearly baseless or the claim is based on a legal theory that is indisputably meritless." See Olson v. Stotts, 9 F.3d 1475, 1476 (10th Cir. 1993) (internal quotation and citation omitted). As set forth in the Court's order of dismissal and order denying reconsideration, plaintiff's claims are based on legal theories that

1 indisputably lack merit (See Order, filed June 17, 2013; Order, filed July 8, 2013.)

2 Accordingly, for the reasons state above:

- 3 1. The Court hereby CERTIFIES the appeal is not taken in good faith.
- 4 2. In light of the above-certification, plaintiff's motion to proceed in forma pauperis
- 5 on appeal is hereby DENIED.
- 6 3. The Clerk is hereby DIRECTED to send a copy of the instant order to the United
- 7 States Court of Appeals for the Ninth Circuit.

8 **IT IS SO ORDERED.**

9 Dated: August 29, 2013


10 MAXINE M. CHESNEY
11 United States District Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28